ERISA has proved remarkably effective in protecting pension benefits for America's private sector employees as well as the integrity of privately managed benefit plans. This is particularly true for "defined benefit plans" that were the norm in 1974. Since then, particularly in recent years, there has been a dramatic shift toward "defined contribution" plans in which workers and their employers contribute to individual accounts, and within a range determined by the pension plan sponsor, choose how to invest that money.

An estimated 42 million employees now participate in defined contribution plans. This means the employees, not the employer, assume a high degree of responsibility for managing their funds. Retirement aspirations and plans depend largely on the prudence and wisdom of their investment decisions. Too often, individual plan participants do not fully understand the investment risks and rely heavily on others for advice, often to their financial detriment. The decline and volatility of the stock market, particularly the precipitous decline in the technology sector, has eroded the value of even the most professionally managed mutual funds. And everyone with a 401(k) retirement account, as well as Federal employees participating in the common stock fund of the Thrift Savings Plan, have seen the value of their accounts plummet by as much as 25 per cent or even more.

H.R. 2269 is intended to address the real need of employees and workers for better investment advice and services. Unfortunately, the bill goes too far in attempting to accomplish this goal. By weakening ERISA's safeguards against conflicts of interest, this bill would remove some of the oldest, most effective and prophylactic protections ever enacted by Congress to protect employees and their retirement savings. H.R. 2269 would allow benefit plans to contract with one firm to both manage participant's investment funds and to provide those same participants with personalized investment advice. In other words, it would permit conflicted investment advice—which is now prohibited by ERISA—and substitute a disclosure regime, similar to the Federal securities laws.

I find this feature of the bill very troublesome. Disclosure is inadequate. The Financial Services Committee held numerous hearings earlier this year on the shortcomings of disclosure as an investor protection device in the area of financial analysts. Regrettably, as even the SEC and many industry leaders have concluded, disclosure is more often used to conceal or obfuscate the existence of conflicts rather than to alert or forewarn consumers. In June, the Committee began examining the very important question of whether investors are receiving unbiased research from securities analysts employed by full service investment banking firms. We learned that investors have become victims of recommendations of analysts who have apparent and direct conflicts of interest relating to their investment advice.

While apparently permitted by the SEC and the securities laws, boilerplate and tedious disclosures concerning conflicts leave investors often unaware of the various economic and strategic interests that the investment bank and the analyst have that can fundamentally undermine the integrity and quality of analysts' research. (The disclosure of these conflicts is often general, inconspicuous and even unintelligible. In addition, current conflict disclosure rules do not even reach analysts touting various stocks on CNBC or CNN.)

Recognizing the magnitude of the problem, as well as the inadequacies of the current disclosure framework, several major investment banking firms acted aggressively to protect investors as well as attempt to restore the confidence of their customers in the quality and objectivity of their financial analysis. For example, Merrill Lynch and Credit Suisse First Boston banned their analysts from owning stock in companies they cover. And Prudential Securities actually exited the investment banking business and is using its lack of conflicts as a marketing tool to attract retail brokerage business.

In my view, disclosure requirements, although positive, are still woefully inadequate to confront the systemic conflicts of analysts that necessarily taint advice, skew the market and ultimately harm investors. I continue to believe SEC rulemaking and direct SEC regulation is required to protect investors from serious conflicts of interest. And I am disappointed that new SEC Chairman Pitt, speaking to a securities industry trade association last week, said "I don't think there is any inherent need for a prohibition against an analyst owning stock" and then expressed his "confidence that Wall Street firms will come up with solutions that are in the best interests of investors."

I don't think Wall Street firms are the best protectors of investors or other consumers or pension plan participants. History—recent history, not ancient history—teaches us otherwise.

I agree with the premise of H.R. 2269 that investors, including employees participating in defined contribution plans, need better information, investment advice and alternatives. But I believe they need them from objective, qualified and independent sources. Fortunately, it is already available in the marketplace without opening a Pandora's box to serious conflicts of interest by eroding ERISA's prohibited transactions safeguards. And there has been no showing to the contrary—there is a highly competitive and diverse market providing independent services to pension plan sponsors and participants.

I do not question the motives of the many financial services firms that are interested in providing additional levels of service to pension plan participants and, therefore, support H.R. 2269. I only question why they support this radical approach when it is possible to develop a more measured approach that will continue important existing protections for plan participants and avoid some of the very serious conflict issues that are undermining the reputation of many financial services firms, angering customers and attracting the attention of regulators and policymakers.

An alternative will be offered during this debate that will attempt to achieve a better balance of several important policy goals—more information and choice for plan participants from independent and professional sources and preservation of essential existing protections against conflicts of interest. I should note that this is the approach favored by groups that actually serve and represent workers and plan participants—AARP, AFL–CIO, Consumer Federation and the Pension Rights Center.

TRIBUTE TO DR. LEE HARTWELL

HON. GEORGE R. NETHERCUTT, JR.

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, November 16, 2001

Mr. NETHERCUTT. Mr. Speaker, I rise to pay tribute to Dr. Lee Hartwell, president and director of the Fred Hutchinson Cancer Research Center in Seattle, Washington. On October 8, 2001, Dr. Hartwell was awarded the 2001 Nobel Prize in Physiology or Medicine.

Dr. Hartwell is a pioneer in the biomedical research community and Washington State is proud to have his leadership. Thirty years of diligent research to understand cell division and the cell cycle has led to this significant accomplishment. Dr. Hartwell's work now forms the basis of our understanding on how cells divide and of the molecular basis of cancer.

I am confident that his findings will result in more effective cancer treatments and eventually save lives. His accomplishments in this area remind us in Congress that federal support for basic biomedical research must remain on the forefront of our National agenda.

We have always known Dr. Hartwell to be a leader for the biomedical research community in the Pacific Northwest. Now, the world knows what a true visionary we have in our state.

ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENT ACT 2001

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 16, 2001

Mr. MATSUI. Mr. Speaker, I am pleased today to join with Congressman CLAY SHAW, the Chairman of the Subcommittee on Social Security, to introduce legislation regarding the fees owed to attorneys who represent disability claimants before the Social Security Administration (SSA). Our Subcommittee has held a number of hearings on the attorney fee process and this bill would make several needed changes to this system that would improve the attorney payment system and thereby expand access to professional representation among disability claimants.

Under current law, when an attorney successfully represents a Social Security disability claimant and that claimant is entitled to past-due benefits, SSA retains a portion of those past-due benefits in order to pay the attorney for the services he or she provided. Specifically, SSA withholds and pays directly to the attorney 25 percent of past-due benefits, not to exceed a cap of $4,000. (Under an alternative procedure, SSA approves a fee for which an attorney submits a petition detailing the specific charges, but in such cases the fee that is paid directly to the attorney by SSA out of past-due benefits cannot exceed the lesser